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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/498,515

02/04/2000

Howard G. Page

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09/29/2010

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EXAMINER

RETTA, YEHDEGA

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

09/29/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/498,515	<b>Applicant(s)</b> PAGE ET AL.	
	<b>Examiner</b> Yehdega Retta	<b>Art Unit</b> 3622	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 29 September 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Yehdega Retta/  
 Primary Examiner, Art Unit 3622

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the Farmer reference does not teach two transport systems which separately transport video data and an insertion point to a single target device. Applicant further asserts that Farmer teaches a single device which transfers cue tones and program material to two separate location (Earth station Receiver 21 transfers cue tones to Ad-insertion system 24 over link 23 and program material to Switch 25 and Modulator 30 over link 22). Examiner is aware that the Earth Station Receiver 21 first transmits the cue tones to Ad-Insertion System and the program material (video and audio) to a switch and then to a modulator before transmitting it to the cable distribution system and subscriber (single target device). Examiner also would like to point out that after the cue tones are transmitted to the AD-Insertion System it is then transmitted to the single target device. The program material is also transmitted to single target device from the modulator. Therefore, Farmer teaches transferring the selected video content to a target viewer device over a first transport system and transferring the selected video advertising to the target viewer device over a second transport system, wherein the first transport system uses greater bandwidth for video transfer than the second transport system; transferring the insertion point to the target viewer device over the second transport system. Applicant also argues that neither Swix nor Zigmond teaches or suggest an insertion point comprising "data indicating where in the selected video content the selected video advertising is to be inserted".

According to applicant's specification, the processing system 211 transfers the insertion points to the scheduler 212 over either the transport system 202 or the transport system 204 through storage 214 and link 215 (see page 6). Applicant's specification however does not disclose that the insertion point is not a cue tone (q tone). Farmer teaches the video and audio channels receiver 21 transmits cue tones on line 23 to ad-insertion system 24 which uses the cue tones to generate timing signals for controlling the insertion of advertising into the program material. Farmer further teaches that consequently, in response to appropriate cue tones on line 23, ad-insertion system 24 automatically inserts commercials into advertising blocks by spooling advertising materials. Therefore, an insertion point is interpreted to mean the same as the timing signals generated by the cue tones.